

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 462

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO TAXATION; PROVIDING FOR THE EQUAL OPPORTUNITY
SCHOLARSHIP TAX CREDIT FOR CONTRIBUTIONS MADE TO CERTAIN
ORGANIZATIONS FOR TUITION SCHOLARSHIPS FOR LOW-INCOME STUDENTS
IN NONPUBLIC SCHOOLS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted
to read:

"[NEW MATERIAL] EQUAL OPPORTUNITY SCHOLARSHIP TAX
CREDIT.--

A. A taxpayer who files an individual New Mexico
income tax return and is not a dependent of another taxpayer
may claim a credit for a contribution made to a scholarship
granting organization if a receipt has been received from the
organization certifying that the contribution will be used for

.171793.3

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 educational scholarships or tuition grants at a qualified
2 school for eligible students. The credit may be claimed in an
3 amount equal to the total contributions made during the taxable
4 year for which the credit is claimed, or prior to April 15 of
5 the following year, but shall not exceed five hundred dollars
6 (\$500) in any taxable year for an individual or one thousand
7 dollars (\$1,000) for a married couple filing jointly. A
8 husband and wife who file separate returns for a taxable year
9 in which they could have filed a joint return may each claim a
10 credit not exceeding five hundred dollars (\$500) for a
11 contribution made to a scholarship granting organization. The
12 credit provided in this subsection shall be known as the "equal
13 opportunity scholarship tax credit".

14 B. The equal opportunity scholarship tax credit
15 shall not be allowed for a contribution that is included in the
16 taxpayer's itemized deductions, as defined in Section 63 of the
17 Internal Revenue Code, for the taxable year.

18 C. The equal opportunity scholarship tax credit
19 provided in this section may only be deducted from the
20 taxpayer's New Mexico income tax liability for the taxable year
21 in which the contribution is made.

22 D. A scholarship granting organization shall:

23 (1) notify the department of its intent to
24 provide educational scholarships to eligible students attending
25 qualified schools;

.171793.3

underscoring material = new
[bracketed material] = delete

1 (2) demonstrate to the department that it has
2 been granted an exemption from the federal income tax pursuant
3 to Section 501(c)(3) of the Internal Revenue Code;

4 (3) provide a department-approved receipt to
5 taxpayers for contributions made to the organization;

6 (4) ensure that at least ninety percent of its
7 revenue from contributions is spent on educational
8 scholarships, and that all revenue from interest or investments
9 is spent on educational scholarships;

10 (5) cooperate with the public education
11 department to conduct criminal background checks on all of its
12 employees and board members and exclude from employment or
13 governance any individual who might reasonably pose a risk to
14 the appropriate use of contributed funds;

15 (6) ensure that educational scholarships are
16 portable during the school year and can be used at any
17 qualified school that accepts an eligible student according to
18 a parent's wishes. If an eligible student moves to a new
19 qualified school during a school year, the educational
20 scholarship amount may be prorated;

21 (7) demonstrate its financial accountability
22 by submitting a financial information report for the
23 organization that complies with uniform financial accounting
24 standards established by the department;

25 (8) ensure that a qualifying school that

.171793.3

underscored material = new
[bracketed material] = delete

1 accepts its educational scholarships will:

2 (a) comply with all health and safety
3 laws or codes that apply to nonpublic schools;

4 (b) hold a valid occupancy permit if
5 required by its municipality;

6 (c) certify that it will not
7 discriminate in admissions on the basis of race, national
8 origin or ethnicity; and

9 (d) provide academic accountability to
10 parents of the students in the program by regularly reporting
11 to the parents on the student's progress;

12 (9) not provide educational scholarships for
13 qualified students to attend any school with paid staff or
14 board members, or relatives thereof, in common with the
15 scholarship granting organization;

16 (10) publicly report to the department by June
17 1 of each year the following information regarding its
18 educational scholarships for the previous calendar year:

19 (a) the name and address of the
20 scholarship granting organization;

21 (b) the total number and total dollar
22 amount of contributions received during the previous calendar
23 year; and

24 (c) the total number and total dollar
25 amount of educational scholarships awarded during the previous

.171793.3

underscoring material = new
[bracketed material] = delete

1 calendar year; and

2 (11) provide educational scholarships to more
3 than one qualifying school.

4 E. The department shall:

5 (1) adopt rules as necessary to implement
6 equal opportunity scholarship tax credits;

7 (2) provide a standardized format for a
8 receipt to be issued by a scholarship granting organization to
9 a taxpayer to indicate the value of a contribution received.
10 The department shall require a taxpayer to provide a copy of
11 this receipt when claiming an equal opportunity scholarship tax
12 credit;

13 (3) provide a standardized format for
14 scholarship granting organizations to report the information
15 required pursuant to Paragraph (10) of Subsection D of this
16 section;

17 (4) have the authority to conduct either a
18 financial review or audit of a scholarship granting
19 organization if possessing evidence of fraud; and

20 (5) bar a scholarship granting organization
21 from participating in the program if the department establishes
22 that the scholarship granting organization has intentionally
23 and substantially failed to comply with the requirements set
24 forth in Subsection D of this section. If the department
25 decides to bar a scholarship granting organization from the

.171793.3

underscored material = new
[bracketed material] = delete

1 program, it shall notify affected scholarship students and
2 their parents of this decision as quickly as possible.

3 F. All qualified schools shall:

4 (1) operate in New Mexico;

5 (2) comply with all state laws that apply to
6 nonpublic schools regarding criminal background checks for
7 employees and exclude from employment any person not permitted
8 by state law to work in a nonpublic school; and

9 (3) fill available spaces by a random
10 selection process, except that a qualifying school may give
11 preference to siblings of enrolled students and previously
12 enrolled scholarship students, if a qualifying school has more
13 eligible students applying than spaces available.

14 G. As used in this section:

15 (1) "educational scholarships" means grants to
16 eligible students to cover all or part of the tuition and fees
17 at a qualified school;

18 (2) "eligible student" means a student who:

19 (a) is a member of a household whose
20 total annual income does not exceed an amount used to qualify
21 for a reduced-price lunch through the federal school lunch
22 programs established pursuant to 42 USCA Sections 1751 through
23 1770, as amended. Once a student receives a scholarship
24 pursuant to the program, the student shall remain eligible
25 regardless of household income until the student graduates from

.171793.3

underscoring material = new
[bracketed material] = delete

1 high school or reaches twenty-one years of age; and

2 (b) resides in New Mexico while
3 receiving a scholarship from a scholarship granting
4 organization;

5 (3) "qualified school" means an accredited
6 nonpublic elementary or secondary school in New Mexico that:

7 (a) does not discriminate in admissions
8 or treatment of students on the basis of a student's race,
9 national origin or ethnicity;

10 (b) has been granted exemption from the
11 federal income tax as an organization qualified pursuant to
12 Section 501(c)(3) of the Internal Revenue Code;

13 (c) requires students to take an annual
14 academic test with individual scores provided to the parents of
15 students; and

16 (d) satisfies the requirements set forth
17 in Subsection F of this section; and

18 (4) "scholarship granting organization" means
19 an organization that:

20 (a) demonstrates to the department that
21 it has been granted exemption from the federal income tax as an
22 organization qualified pursuant to Section 501(c)(3) of the
23 Internal Revenue Code;

24 (b) provides financial assistance for
25 the education of children in the form of educational

.171793.3

underscored material = new
[bracketed material] = delete

1 scholarships or tuition grants to eligible students allowing
2 them to attend any qualified school of their parents' choice;

3 (c) expends at least ninety percent of
4 its equal opportunity scholarship tax credit qualifying
5 contributions for educational scholarships or tuition grants
6 for children enrolled in a qualified school;

7 (d) provides one hundred percent of its
8 educational scholarships or tuition grants to children who at
9 the time of initial application for the scholarship or tuition
10 grant qualify for free or reduced-price lunches through the
11 federal school lunch programs established pursuant to 42 USCA
12 Sections 1751 through 1770, as amended; and

13 (e) satisfies the requirements set forth
14 in Subsection D of this section."

15 Section 2. A new section of the Corporate Income and
16 Franchise Tax Act is enacted to read:

17 "[NEW MATERIAL] EQUAL OPPORTUNITY SCHOLARSHIP TAX
18 CREDIT.--

19 A. A taxpayer that files a New Mexico income tax
20 return may claim a credit for a contribution made to a
21 scholarship granting organization if a receipt has been
22 received from the organization certifying that the contribution
23 will be used for educational scholarships or tuition grants at
24 a qualified school for eligible students. The credit may be
25 claimed in an amount equal to the total contributions made

.171793.3

1 during the taxable year for which the credit is claimed, or
2 prior to April 15 of the following year. The credit provided
3 in this subsection shall be known as the "equal opportunity
4 scholarship tax credit".

5 B. The equal opportunity scholarship tax credit
6 shall not be allowed for a contribution that is included in a
7 claim for a deduction or credit pursuant to the Internal
8 Revenue Code.

9 C. The equal opportunity scholarship tax credit
10 provided in this section may only be deducted from the
11 taxpayer's New Mexico corporate income tax liability for the
12 taxable year in which the contribution is made.

13 D. A scholarship granting organization shall:

14 (1) notify the department of its intent to
15 provide educational scholarships to eligible students attending
16 qualified schools;

17 (2) demonstrate to the department that it has
18 been granted an exemption from the federal income tax pursuant
19 to Section 501(c)(3) of the Internal Revenue Code;

20 (3) provide a department-approved receipt to
21 taxpayers for contributions made to the organization;

22 (4) ensure that at least ninety percent of its
23 revenue from contributions is spent on educational
24 scholarships, and that all revenue from interest or investments
25 is spent on educational scholarships;

underscoring material = new
[bracketed material] = delete

1 (5) cooperate with the public education
2 department to conduct criminal background checks on all of its
3 employees and board members and exclude from employment or
4 governance any individual who might reasonably pose a risk to
5 the appropriate use of contributed funds;

6 (6) ensure that educational scholarships are
7 portable during the school year and can be used at any
8 qualified school that accepts an eligible student according to
9 a parent's wishes. If an eligible student moves to a new
10 qualified school during a school year, the educational
11 scholarship amount may be prorated;

12 (7) demonstrate its financial accountability
13 by submitting a financial information report for the
14 organization that complies with uniform financial accounting
15 standards established by the department;

16 (8) ensure that a qualifying school that
17 accepts its educational scholarships will:

18 (a) comply with all health and safety
19 laws or codes that apply to nonpublic schools;

20 (b) hold a valid occupancy permit if
21 required by its municipality;

22 (c) certify that it will not
23 discriminate in admissions on the basis of race, national
24 origin or ethnicity; and

25 (d) provide academic accountability to

.171793.3

1 parents of the students in the program by regularly reporting
2 to the parents on the student's progress;

3 (9) not provide educational scholarships for
4 qualified students to attend any school with paid staff or
5 board members, or relatives thereof, in common with the
6 scholarship granting organization;

7 (10) publicly report to the department by June
8 1 of each year the following information regarding its
9 educational scholarships for the previous calendar year:

10 (a) the name and address of the
11 scholarship granting organization;

12 (b) the total number and total dollar
13 amount of contributions received during the previous calendar
14 year; and

15 (c) the total number and total dollar
16 amount of educational scholarships awarded during the previous
17 calendar year; and

18 (11) provide educational scholarships to more
19 than one qualifying school.

20 E. The department shall:

21 (1) adopt rules as necessary to implement
22 equal opportunity scholarship tax credits;

23 (2) provide a standardized format for a
24 receipt to be issued by a scholarship granting organization to
25 a taxpayer to indicate the value of a contribution received.

.171793.3

underscoring material = new
[bracketed material] = delete

1 The department shall require a taxpayer to provide a copy of
2 this receipt when claiming an equal opportunity scholarship tax
3 credit;

4 (3) provide a standardized format for
5 scholarship granting organizations to report the information
6 required pursuant to Paragraph (10) of Subsection D of this
7 section;

8 (4) have the authority to conduct either a
9 financial review or audit of a scholarship granting
10 organization if possessing evidence of fraud; and

11 (5) bar a scholarship granting organization
12 from participating in the program if the department establishes
13 that the scholarship granting organization has intentionally
14 and substantially failed to comply with the requirements set
15 forth in Subsection D of this section. If the department
16 decides to bar a scholarship granting organization from the
17 program, it shall notify affected scholarship students and
18 their parents of this decision as quickly as possible.

19 F. All qualified schools shall:

20 (1) operate in New Mexico;

21 (2) comply with all state laws that apply to
22 nonpublic schools regarding criminal background checks for
23 employees and exclude from employment any person not permitted
24 by state law to work in a nonpublic school; and

25 (3) fill available spaces by a random

.171793.3

1 selection process, except that a qualifying school may give
2 preference to siblings of enrolled students and previously
3 enrolled scholarship students, if a qualifying school has more
4 eligible students applying than spaces available.

5 G. As used in this section:

6 (1) "educational scholarships" means grants to
7 eligible students to cover all or part of the tuition and fees
8 at a qualified school;

9 (2) "eligible student" means a student who:

10 (a) is a member of a household whose
11 total annual income does not exceed an amount used to qualify
12 for a reduced-price lunch through the federal school lunch
13 programs established pursuant to 42 USCA Sections 1751 through
14 1770, as amended. Once a student receives a scholarship
15 pursuant to the program, the student will remain eligible
16 regardless of household income until the student graduates from
17 high school or reaches twenty-one years of age; and

18 (b) resides in New Mexico while
19 receiving a scholarship from a scholarship granting
20 organization;

21 (3) "qualified school" means an accredited
22 nonpublic elementary or secondary school in New Mexico that:

23 (a) does not discriminate in admissions
24 or treatment of students on the basis of a student's race,
25 national origin or ethnicity;

1 (b) has been granted exemption from the
2 federal income tax as an organization qualified pursuant to
3 Section 501(c)(3) of the Internal Revenue Code;

4 (c) requires students to take an annual
5 academic test with individual scores provided to the parents of
6 students; and

7 (d) satisfies the requirements set forth
8 in Subsection F of this section; and

9 (4) "scholarship granting organization" means
10 an organization that:

11 (a) demonstrates to the department that
12 it has been granted exemption from the federal income tax as an
13 organization qualified pursuant to Section 501(c)(3) of the
14 Internal Revenue Code;

15 (b) provides financial assistance for
16 the education of children in the form of educational
17 scholarships or tuition grants to eligible students allowing
18 them to attend any qualified school of their parents' choice;

19 (c) expends at least ninety percent of
20 its equal opportunity scholarship tax credit qualifying
21 contributions for educational scholarships or tuition grants
22 for children enrolled in a qualified school;

23 (d) provides one hundred percent of its
24 educational scholarships or tuition grants to children who at
25 the time of initial application for the scholarship or tuition

underscoring material = new
[bracketed material] = delete

1 grant qualify for free or reduced-price lunches through the
2 federal school lunch programs established pursuant to 42 USCA
3 Sections 1751 through 1770, as amended; and

4 (e) satisfies the requirements set forth
5 in Subsection D of this section."

6 Section 3. APPLICABILITY.--The provisions of this act
7 apply to taxable years beginning on or after January 1, 2009,
8 but not to taxable years beginning after January 1, 2013.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25